

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARTELL JONES #701358,

Case No. 2:24-cv-00053

Plaintiff,

Hon. Paul L. Maloney
U.S. District Judge

v.

MARSHA NURKALA, et al.,

Defendants.

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REPORT AND RECOMMENDATION

I. Introduction

This Report and Recommendation addresses Defendants' motion for summary judgment due to Plaintiff's failure to exhaust administrative remedies. (ECF No. 18.) Plaintiff did not file a response.

State prisoner Martell Jones filed a verified complaint under 42 U.S.C. § 1983 alleging that Defendants retaliated against him in violation of the First Amendment and discriminated against him in violation of the Fourteenth Amendment. (ECF No. 1.) Defendants argue that Plaintiff failed to exhaust his administrative remedies against them. Jones alleged that Baraga Correctional Facility Resident Unit Manager Nurkala, Sergeant Jurva, Sergeant Coronado, and Corrections Officer Christoff harassed him and wrote fabricated misconduct tickets against him, causing his move to a segregation unit in the prison. Jones further alleges that he was discriminated against due to his Buddhist religious beliefs.

Jones alleged in his complaint that the Michigan Department of Corrections (MDOC) grievance system was unavailable to him because Defendants Christoff, Jurva, and Nurkala denied him grievances upon request. (ECF No. 1, PageID.10-11.) Defendants have not addressed these allegations in their motion.

Only Defendants Nurkala, Jurva, and Christoff move for summary judgment. Defendant Coronado does not join in the motion.¹

It is undisputed that Jones never properly filed a grievance to exhaust his administrative remedies on the claims that he asserted in his complaint. Jones alleged in his verified complaint that he was denied grievance forms upon request, and that the MDOC grievance procedures were unavailable to him. Defendants failed to respond to Jones's claim that that grievance procedures were unavailable to him.

Accordingly, it is respectfully recommended that the Court deny Defendants' motion for summary judgment.

II. Summary Judgment Standard

Summary judgment is appropriate when the record reveals that there are no genuine issues as to any material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Kocak v. Comty. Health Partners of Ohio, Inc.*, 400 F.3d 466, 468 (6th Cir. 2005). The standard for determining whether summary judgment is appropriate is "whether the evidence presents a sufficient

¹ The motion recognizes that a claim exists against Defendant Coronado: "Corrections Officer (CO) Joseph Coronado fabricated a false memorandum in support of the ticket" (ECF No. 19, PageID.65.) Defendant Coronado has appeared in this case and has waived service. (ECF Nos. 15 and 16.)

disagreement to require submission to a jury^[2] or whether it is so one-sided that one party must prevail as a matter of law.” *State Farm Fire & Cas. Co. v. McGowan*, 421 F.3d 433, 436 (6th Cir. 2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). The court must consider all pleadings, depositions, affidavits, and admissions on file, and draw all justifiable inferences in favor of the party opposing the motion. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

When, as here, the non-movant fails to respond to a motion for summary judgment, the Court must “examine the movant’s motion for summary judgment to ensure that he has discharged his initial burden.” *Stough v. Mayville Cmty. Sch.*, 138 F.3d 612, 614 (6th Cir. 1998) (citing *Carver v. Bunch*, 946 F.2d 451, 455 (6th Cir. 1991)).

III. Exhaustion of Administrative Remedies

A prisoner’s failure to exhaust his administrative remedies is an affirmative defense that Defendants have the burden to plead and prove. *Jones v. Bock*, 549 U.S.

² The Seventh Amendment does not always require courts to submit factual disputes about exhaustion to a jury. *Lee v. Willey*, 789 F.3d 673, 678 (6th Cir. 2015). If the factual disputes about exhaustion do not overlap with the merits of the plaintiff’s substantive claims, then the court may conduct a bench trial to resolve the exhaustion issue. *Richards v. Perttu*, 96 F.4th 911, 923 (6th Cir. 2024), *cert. granted*, No. 23-1324, 2024 WL 4394132 (U.S. Oct. 4, 2024). In a bench trial on exhaustion, the defendants must show that the plaintiff failed to exhaust his administrative remedies by a preponderance of the evidence. *Willey*, 789 F.3d at 677 (citing *Jones v. Bock*, 549 U.S. 199, 218 (2007)) (“Failure to exhaust administrative remedies is an affirmative defense, which the defendant has the burden to plead and prove by a preponderance of the evidence.”).

199, 212-16 (2007). “[W]here the moving party has the burden—the plaintiff on a claim for relief or the defendant on an affirmative defense—his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986). The Sixth Circuit has repeatedly emphasized that the party with the burden of proof “must show the record contains evidence satisfying the burden of persuasion and that the evidence is so powerful that no reasonable jury would be free to disbelieve it.” *Cockrel v. Shelby Cnty. Sch. Dist.*, 270 F.3d 1036, 1056 (6th Cir. 2001). Accordingly, summary judgment in favor of the party with the burden of persuasion “is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact.” *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999).

Pursuant to the applicable portion of the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a), a prisoner bringing an action with respect to prison conditions under 42 U.S.C. § 1983 must exhaust his available administrative remedies. *Porter v. Nussle*, 534 U.S. 516, 532 (2002); *Booth v. Churner*, 532 U.S. 731, 733 (2001). A prisoner must first exhaust available administrative remedies, even if the prisoner may not be able to obtain the specific type of relief he seeks in the state administrative process. *Porter*, 534 U.S. at 520; *Booth*, 532 U.S. at 741; *Knuckles El v. Toombs*, 215 F.3d 640, 642 (6th Cir. 2000); *Freeman v. Francis*, 196 F.3d 641, 643 (6th Cir. 1999). To properly exhaust administrative remedies, prisoners must complete the administrative review process in accordance with the deadlines and other applicable procedural rules. *Jones*, 549 U.S. at 218-19; *Woodford v. Ngo*, 548 U.S. 81, 90-91

(2006). “Compliance with prison grievance procedures, therefore, is all that is required by the PLRA to ‘properly exhaust.’” *Jones*, 549 U.S. at 218-19. In rare circumstances, the grievance process will be considered unavailable where officers are unable or consistently unwilling to provide relief, where the exhaustion procedures may provide relief, but no ordinary prisoner can navigate it, or “where prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.” *Ross v. Blake*, 578 U.S. 632, 644 (2016).

“Beyond doubt, Congress enacted [Section] 1997e(a) to reduce the quantity and improve the quality of prisoner suits.” *Porter*, 534 U.S. at 524. In the Court’s view, this objective was achieved in three ways. First, the exhaustion requirement “afforded corrections officials time and opportunity to address complaints internally before allowing the initiation of a federal case.” *Id.* at 525. Second, “the internal review might ‘filter out some frivolous claims.’” *Id.* (quoting *Booth*, 532 U.S. at 737). And third, “adjudication could be facilitated by an administrative record that clarifies the contours of the controversy.” *Id.* When institutions are provided adequate notice as required under the PLRA, the opportunity to address the claims internally furthers the additional goals of limiting judicial interference with prison administration. *Baker v. Vanderark*, 1:07-cv-004, 2007 WL 3244075, *5 (W.D. Mich., Nov. 1, 2007).

Michigan Dept. of Corrections (MDOC) Policy Directive 03.02.130 (effective September 25, 2023) sets forth the applicable grievance procedures for prisoners in

MDOC custody at the time relevant to this complaint. Inmates must first attempt to informally resolve a grievable issue within two business days of becoming aware of the issue, unless prevented by circumstances beyond his or her control. *Id.* at ¶ W. If informal resolution is unsuccessful, the inmate may proceed to Step I of the grievance process and submit a completed grievance form within five business days of the attempted informal resolution. *Id.* at ¶¶ W, CC. The inmate submits the grievance to a designated Grievance Coordinator, who assigns it to a respondent. *Id.* at ¶ CC. The Policy Directive also provides the following directions for completing grievance forms: “The issues should be stated briefly but concisely. Information provided is to be limited to the facts involving the issue being grieved (i.e., who, what, when, where, why, how). Dates, times, places and names of all those involved in the issue being grieved are to be included.” *Id.* at ¶ Y (emphasis in original).

If the inmate is dissatisfied with the Step I response, or does not receive a timely response, he may appeal to Step II by obtaining an appeal form within ten business days of the response, or if no response was received, within ten days after the response was due. MDOC Policy Directive 03.02.130 at ¶¶ JJ. The respondent at Step II is designated by the policy, *e.g.*, the regional health administrator for medical care grievances. *Id.* at ¶ LL.

If the inmate is still dissatisfied with the Step II response, or does not receive a timely Step II response, he may appeal to Step III using the same appeal form. *Id.* at ¶¶ NN. The Step III form shall be sent within ten business days after receiving the Step II response, or if no Step II response was received, within ten business days

after the date the Step II response was due. *Id.* The Grievance Section is the respondent for Step III grievances on behalf of the MDOC director. *Id.* at ¶ 00.

When the grievance procedures are not available because the issue presented is non-grievable, exhausting those procedures is not required. It is well-established that a prisoner “cannot be required to exhaust administrative remedies regarding non-grievable issues.” *Figel v. Bouchard*, 89 F. App’x 970, 971 (6th Cir. 2004); *Mays v. Kentucky Dept. of Corrections*, 2018 WL 4603153, at *3 (W.D. Ky. Sept. 25, 2018) (“It is beyond debate that an inmate cannot be required to exhaust administrative remedies regarding non-grievable issues.”); *Reeves v. Hobbs*, 2013 WL 5462147 (W.D. Ark. Sept. 3, 2013) (“Defendants cannot treat a complaint as non-grievable, and therefore not subject to the grievance procedure, and then turn around and maintain the claim fails because [the plaintiff] failed to follow the grievance procedure. As the well-known proverb states, they cannot have their cake and eat it too.”). However, when other administrative remedies are available, the prisoner is required to exhaust those remedies prior to filing a federal lawsuit.

When prison officials waive enforcement of these procedural rules and instead consider a non-exhausted claim on its merits, a prisoner’s failure to comply with those rules will not bar that prisoner’s subsequent federal lawsuit. *Reed-Bey v. Pramstaller*, 603 F.3d 322, 325 (6th Cir. 2010). The Sixth Circuit has explained:

[A] prisoner ordinarily does not comply with MDOCPD 130—and therefore does not exhaust his administrative remedies under the PLRA—when he does not specify the names of each person from whom he seeks relief. *See Reed-Bey v. Pramstaller*, 603 F.3d 322, 324-25 (6th Cir. 2010) (“Requiring inmates to exhaust prison remedies in the manner the State provides—by, say, identifying *all*

relevant defendants—not only furthers [the PLRA’s] objectives, but it also prevents inmates from undermining these goals by intentionally defaulting their claims at each step of the grievance process, prompting unnecessary and wasteful federal litigation process.”). An exception to this rule is that prison officials waive any procedural irregularities in a grievance when they nonetheless address the grievance on the merits. *See id.* at 325. We have also explained that the purpose of the PLRA’s exhaustion requirement “is to allow prison officials ‘a fair opportunity’ to address grievances on the merits to correct prison errors that can and should be corrected to create an administrative record for those disputes that eventually end up in court.” *Id.* at 324.

Mattox v. Edelman, 851 F.3d 583, 590-91 (6th Cir. 2017).

IV. Analysis

Defendants Nurkala, Jurva, and Christoff argue that Jones never properly exhausted his claims against them by submitting a grievance through each step of the MDOC grievance procedures. As of September 25, 2023, MDOC Policy Directive 03.02.130 at ¶¶ P 9 and P11 states that prisoners wishing to pursue claims that misconducts tickets were retaliatory “must file a grievance on the sole issue of retaliation and it shall not be rejected as a grievance on the hearing decision.” (ECF No. 19-2, PageID.78.) Here, Jones asserts that the harassment began as of March 24, 2024. (ECF No. 1, PageID.4.) To exhaust his claims, he was required to file grievances in accordance with MDOC policy. He did not.

Jones alleged in his complaint that the MDOC grievance system was unavailable to him because Defendants Christoff, Jurva, and Nurkala denied him grievances upon request. (ECF No. 1, PageID.10-11.) Defendants failed to respond to Jones’s allegations in his verified complaint that they each denied his request for grievance forms. *See Lavado v. Keohane*, 992 F.2d 601, 605 (6th Cir. 1993) (a verified

complaint has the same force and effect as an affidavit for purposes of responding to a motion for summary judgment.)

Accordingly, it is the opinion of the undersigned that Defendants Nurkala, Jurva, and Christoff failed to meet their burden to establish that no genuine issue of material fact exists, which would entitle them to summary judgment.

V. Recommendation

For these reasons, the undersigned respectfully recommends that this Court deny Defendants' motion for summary judgment.

Dated: March 25, 2025

/s/ Maarten Vermaat
MAARTEN VERMAAT
U. S. MAGISTRATE JUDGE

NOTICE TO PARTIES

Any objections to this Report and Recommendation must be filed and served within fourteen days of service of this notice on you. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b). All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to file timely objections may constitute a waiver of any further right of appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); see *Thomas v. Arn*, 474 U.S. 140 (1985).